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**In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Statesboro Division**

In the matter of:	)	
	)	Adversary Proceeding
JOHN DOUGLAS GALBREATH	)	
(Chapter 7 Case <u>99-60517</u> )	)	Number <u>00-6017</u>
	)	
<i>Debtor</i>	)	
	)	
	)	
	)	
JAMES B. WESSINGER, III	)	
Chapter 7 Trustee	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
v.	)	
	)	
JOEL SPIVEY	)	
RONNIE A. SPIVEY	)	
	)	
<i>Defendants</i>	)	

**ORDER ON MOTION TO AMEND AND  
RECAST COMPLAINT**

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The Trustee in this Chapter 7 matter initially sued Joel and Ronnie Spivey alleging that a fraudulent transfer had occurred on February 12, 1999, when the Debtor John Douglas Galbreath transferred his one-third interest in certain real estate to the Defendants for a sum which was less than the reasonably equivalent value of the property transferred alleging that the transfer could be set aside under 11 U.S.C. § 548(a) either because it was transferred for less than reasonably equivalent value at a time when the

Debtor was insolvent or that the transfer occurred with actual intent to hinder, delay, or defraud creditors, and that the transfer occurred within one year prior to the filing of the case.

The Motion to Amend and Recast seeks the addition of the Debtor's mother, brother, and sister-in-law, together with Douglas Asphalt Company, a closely held corporation of the original individual Defendants Joel and Ronnie Spivey. The Trustee asserts, in addition to the conveyance which is the subject of the original action, that the Debtor, as co-maker, within one year of the filing of this case, executed a promissory note payable to Douglas Asphalt Company in the amount of \$1.5 million which represented the amount of financial advances to his company, Galbreath Clearing, by Douglas Asphalt Company for which the Debtor was not previously personally liable. Trustee alleges that the note which the Debtor signed as co-maker was secured by three parcels of property owned by the Debtor individually. The Trustee alleges that the Debtor personally did not receive reasonably equivalent value in exchange for his execution of the \$1.5 million note and the pledge of his personal assets.

The Trustee seeks further to add Debtor's sister and brother-in-law, Alicia G. Edwards and Richard A. Edwards, and the Debtor's mother, Jean S. Galbreath, as parties Defendant because each of them was the recipient of a conveyance of real property that the Trustee alleges was for less than reasonably equivalent value or because the transfer was made with the actual intent to hinder, delay, or defraud creditors and was made at a time when the Debtor was insolvent.

The Spiveys filed an objection to the Trustee's Motion and it was considered by the Court on April 27, 2000. Having considered the argument of counsel and applicable authorities, the Motion is granted. Bankruptcy Rule 7020 incorporates Rule 20 of the Federal Rules of Civil Procedure as applicable in adversary proceedings. That Rule provides in relevant part as follows:

(a) Permissive Joinder . . . . All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

I find the language of Rule 20 to clearly authorize joinder in this case. See In re Lee Way Holding Company, 104 B.R. 881 (Bankr. S.D. Ohio, 1989)(finding joinder appropriate as Plaintiff established a commonality of law and fact and because all claims, although separate and distinct, arose out of a series of transactions that were sufficiently related - involving collection of undercharges on accounts receivable); United States v. Mississippi, 380 U.S. 128 (1965)(finding joinder proper as activities were part of a series of transactions or occurrences involving voter registration and that there were common questions of law or fact to all defendants); *Contra* In re M & L Business Machine Co., Inc., 132 B.R. 433 (Bankr. D. Colo.)(finding that joinder was improper as the transactions

forming the basis for each claim for relief were discrete as to the defendant or defendants against whom relief is sought. Only nexus of claims was the fact that they were all post-petition transfers from funds of the Debtor). M & L requires no different conclusion. The Court found the joinder an improper effort to circumvent the payment of separate filing fees on cases which were entirely unrelated.

Having considered the allegations set forth in the amended and recast complaint I find that it alleges a series of transactions or occurrences which share common questions of law and fact in that (1) the transactions which are alleged to be voidable as fraudulent all occurred within a period of one year of the Debtor's filing bankruptcy, and that (2) the Debtor's insolvency at the time of the transactions and (3) his actual intent, if any, to hinder, delay, and defraud creditors generally must be considered as an element of the Trustee's proof as to each separate transaction.

While the liability asserted against the individual Defendants may not be joint, Rule 20 permits joinder, even if relief is sought severally, so long as the commonality of questions of law and fact exist.

I therefore GRANT the Motion to Amend and Recast Complaint.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of June, 2000.